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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 92-253
	)	
BAKCOR BROADCASTING, INC., DEBTOR	)	File No. BRH-900330VV
c/o DENNIS ELAM, TRUSTEE	)	
	)	
For Renewal of License of	)	
Station KLIK(FM)	)	
Lubbock, Texas	)	
	)	
SOUTHWEST EDUCATIONAL MEDIA	)	File No. BPED-900629MK
FOUNDATION OF TEXAS, INC.	)	
	)	
For Construction Permit for a New	)	
FM Station on Channel 229C1	)	
Lubbock, Texas	)	
To: Honorable Walter C. Miller		
Administrative Law Judge		

**REPLY TO OPPOSITION TO MOTION TO ENLARGE THE ISSUES**

Bakcor Broadcasting, Inc., Debtor, c/o Dennis Elam, Trustee ("Bakcor"), pursuant to Sections 1.294(c) and 1.4 of the Commission's Rules and by its counsel, hereby submits its Reply to the Opposition to Motion to Enlarge the Issues filed by Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT") on December 15, 1992.

1. Bakcor filed a timely Motion to Enlarge the Issues on November 30, 1992, requesting that the issues in this proceeding be

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enlarged to explore whether SEMFOT is qualified to be a Commission licensee due to (a) its admitted violations of the Commission's Rules in constructing modifications to Stations KAMY and KLMN before receiving Commission approval; (b) its failure to report all pending applications in which SEMFOT or its principals had an interest; (c) questions about its financial qualifications based upon the number of applications pending simultaneously; and (d) its failure to meet the Commission's qualifications to operate as a noncommercial educational facility. In its Opposition, SEMFOT rehashes the facts but fails adequately to answer the critical question of SEMFOT's motive. And, it is that question which compels the enlargement of the issues.

#### **ISSUE 1: PREMATURE CONSTRUCTION OF STATIONS KAMY AND KLMN**

2. SEMFOT offers two reasons why an issue should not be added to this proceeding to explore the circumstances surrounding the construction of modifications to facilities for Stations KAMY and KLMN prior to receiving Commission authorization. SEMFOT states that it admitted the violations to the Commission, but it glosses over the fact that the violations were admitted only **after** they were brought to the attention of the Commission by another licensee. The question remains whether or not SEMFOT deliberately violated the Commission's Rules or, as SEMFOT alleges, it merely misunderstood the Rules. This is precisely the type of question that can be answered only after a full and fair hearing to consider

all the facts surrounding the two admitted incidents.

3. The second reason SEMFOT offers why the issue should not be added in this proceeding is that the party who raised the issue of premature construction before the Commission, Williams Broadcasting, has settled its differences with SEMFOT and the Commission has approved a settlement agreement between the parties. SEMFOT infers from the approval of the settlement that the Commission is no longer concerned with the issue. What SEMFOT fails to point out is that the very applications which Williams opposed and which were the subject of the settlement remain pending. The Commission did not take the opportunity to act on those applications at the same time that it acted on the settlement. This suggests that the Commission continues to have questions about the allegations raised by Williams. That conclusion is buttressed by the fact that the stations which were the focus of Williams' complaint are included in the condition in the Hearing Designation Order which was adopted and released **after** the date the settlement with Williams was approved.

#### **ISSUE 2: FAILURE TO REPORT PENDING APPLICATIONS**

4. SEMFOT does not dispute its failure to report numerous pending applications but tries to minimize the seriousness of the reporting violations by arguing that SEMFOT was unaware of the status of the numerous LPTV applications filed by Mary Helen Atkins

and that, in any event, SEMFOT eventually amended its application in this proceeding to report numerous pending and dismissed applications. The undisputed facts speak for themselves. SEMFOT only reported many of the pending and dismissed applications in which it or its principals had an interest **after** Bakcor enumerated them in a Petition to Deny filed against SEMFOT. Again, the question of SEMFOT's motive in neglecting to report these applications is not clear. While it is possible that such a failure merely reflects sloppy record keeping it may mean that SEMFOT deliberately tried to hide how many applications were then pending so as to avoid questions about its financial qualifications. SEMFOT's Opposition does not adequately answer the question of why SEMFOT failed to report applications that the Commission's rules require be disclosed. And, for that reason the issue should be added.

### **ISSUE 3: FINANCIAL QUALIFICATIONS AND FALSE CERTIFICATION**

5. In responding to Bakcor's request to add a financial issue, SEMFOT submits information to show that it had the financial capability to construct a new station in Lubbock and therefore concludes that its financial qualifications are not at issue. Bakcor's request for a financial qualifications issue, and a corresponding false certification issue, is not based upon the one application that is the subject of this proceeding but is based upon the fact that so many applications for new facilities were

pending at one time. SEMFOT fails to address the core issue of whether it had adequate financial resources to construct all of the facilities for which it applied at the time that those applications were filed. Even assuming that SEMFOT has shown without question its ability to construct the Lubbock facility, this does not eliminate the need to explore whether SEMFOT met the Commission's financial qualifications requirements for the many applications that were pending on June 29, 1990.

#### **ISSUE 4: QUALIFICATIONS AS A NONCOMMERCIAL APPLICANT**

6. While SEMFOT argues that it meets the criteria to be eligible as a noncommercial educational applicant, it remains unclear whether SEMFOT has met the terms of Section 73.503 of the Commission's Rules. That rule is specific in describing what types of entities can claim such eligibility and SEMFOT has not explained how its application for this facility meets the requirements of the rule.

#### **DISCOVERY PROCEDURES**

7. Bakcor disagrees with SEMFOT in its interpretation of the applicability of Section 1.229(e) of the Commission's Rules. SEMFOT is an applicant for a new facility and therefore fits squarely within the group of applicants that the rule is meant to include. Therefore, including a motion for production of documents

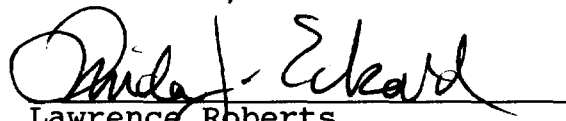
with the motion to enlarge issues was proper. Moreover, the requests are not overly broad assuming the issues sought by Bakcor are added. Finally, after devoting two pages of its opposition to comments on the scope of the requests, SEMFOT then asks that it be provided a second opportunity to comment should the Presiding Judge add the issues and rule favorably on the document request. SEMFOT's request should be denied. First, it had an opportunity to comment and it did comment. Another opportunity would be repetitive. Second, the purpose behind Section 1.229(e), which requires the submission of a motion for production of documents with a motion to enlarge the issues, would be defeated if the pleading cycle is extended to permit further comment thus leading to further delay in ruling on the motion.

WHEREFORE, for the foregoing reasons, the issues in this proceeding should be enlarged to include those issues specified in Bakcor's Motion to Enlarge the Issues.

Respectfully submitted,

BAKCOR BROADCASTING, INC., DEBTOR,  
C/O DENNIS ELAM, TRUSTEE

By:

  
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Its Attorneys

December 28, 1992

CERTIFICATE OF SERVICE

Linda J. Eckard hereby certifies that she has sent a copy of the foregoing REPLY TO OPPOSITION TO MOTION TO ENLARGE THE ISSUES by first class U.S. mail, postage prepaid, or by hand delivery, on this 28th day of December, 1992, to the following:

\*Honorable Walter C. Miller  
Administrative Law Judge  
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Linda J. Eckard

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\*By Hand Delivery